

ADMINISTRATIVE ORDER DATED OCTOBER 6, 2020

OF THE CITY MANAGER OF THE CITY OF BEND, OREGON

PERMITTING TEMPORARY ADMINISTRATIVE APPROVAL FOR RECREATIONAL VEHICLES, SELF-CONTAINED TRAVEL TRAILERS OR SIMILAR VEHICLES (TEMPORARY EMERGENCY ACCOMODATIONS) ON PRIVATE PROPERTY WITHIN THE CITY OF BEND TO PROTECT THE HEALTH AND SAFETY AND WELFARE OF THE BEND COMMUNITY AND OREGONIANS DURING THE EMERGENCY IN THE STATE OF OREGON DUE TO EXTREME WILDFIRES AND DISPLACEMENT OF PERSONS FROM THEIR HOMES

The City Manager of the City of Bend finds that:

1. During this 2020 fire season, Oregon experienced life-threatening fires and smoke at an unprecedented level, threatening communities and creating a crisis all over the state. Countless Oregonians have been forced from or lost their homes, and businesses have been lost as these fires have displaced entire communities.
2. On August 20, 2020, Governor Brown issued Executive Order No. 20-35, declaring a state of emergency due to the imminent threat of wildfires. This declaration recognized the extreme fire danger presented by hot, dry, windy conditions, as well as the significant risk that wildfires would result in evacuations, threats to critical infrastructure, and the destruction of homes and other structures.
3. In the weeks that followed, the extreme danger materialized, as multiple fires burned across Oregon, destroying homes, displacing individuals, and causing injury and loss of life.
4. ORS 401.965(5) empowers the Governor to declare an abnormal disruption of the market when any emergency prevents ready availability of consumer goods and services. The Governor's office received reports that some persons evacuated from fire areas to lodging facilities may be experiencing unusual increases in lodging rates, found that the ongoing wildfires present an emergency that prevents ready availability of essential goods and services, and also directed that the Oregon Department of Justice investigate any complaints of unconscionably excessive prices of essential consumer goods and services due to this disruption. See, Executive Order 20-42, Declaration of Abnormal Disruption of the Market Due to Wildfires, issued September 10, 2020.
5. On various dates in September, the Governor approved executive orders under the Emergency Conflagration Act (ORS 476.510-475.610) for multiple fires. This allowed mobilization of statewide resources and coordination to assist in battling the fires, where a threat to life, safety and property exceeds the firefighting capabilities of local firefighting personnel and equipment. The various fires include, but are not limited to, the North Cascades Complex Fire, Beachie Creek Fire, Lionshead Fire, Riverside Fire, Almeda Fire, Archie Creek Fire, and Holiday Farm Fire. See:
<https://www.oregon.gov/gov/admin/pages/executive-orders.aspx>

6. On September 7, 2020, upon request from the State of Oregon, the President declared that a major disaster exists in the State of Oregon and ordered Federal aid to supplement State, tribal, and local recovery efforts in the areas affected by wildfires beginning on September 8 and continuing. This action authorizes the Department of Homeland Security, Federal Emergency Management Agency (FEMA) to coordinate disaster relief efforts, and identify, mobilize and provide equipment and resources necessary to alleviate the impacts of the emergency.
7. The number of individuals displaced by the fires has been estimated in the tens of thousands. While some have been or will be able to return to their homes once evacuation orders have been lifted, a substantial number of homes have either been destroyed or rendered uninhabitable.
8. Many of the cities affected, including Medford, Ashland, Talent, Detroit and others, already had a very low vacancy rate before the fires; now, with the substantial number of displaced individuals, they do not have the housing available to meet anticipated demand until new housing units are built.
9. In addition, the wildfire emergency has occurred during the ongoing public health emergency, making staying in shelters and other crowded areas more complicated. The novel coronavirus (COVID-19) is a highly contagious respiratory disease that can lead to serious and sometimes fatal illness. On March 11, 2020, the World Health Organization declared COVID-19 a pandemic, acknowledging the virus was likely to spread to countries all around the world. COVID-19 was declared a national emergency on March 13, 2020. Oregon Governor Kate Brown issued a series of executive orders, beginning March 8, 2020, responding to a growing number of cases in Oregon. On May 14, 2020 and June 5, 2020, the Governor established a phased, regionally-tailored framework for reopening the state (EO 20-25 and EO 20-27), and required compliance with future Oregon Health Authority (OHA) guidance. Deschutes County was approved for Phase 1 reopening on May 15, 2020, and for Phase 2 reopening on June 6, 2020. These orders continue to provide for a phased, data-driven and regionally tailored approach, with continued limitations on indoor gatherings, physical distancing and mask wearing provisions in place. On September 1, 2020, the Governor issued EO 20-38, which reviewed the various executive orders and determined which would stay in place for an additional 60 days.
10. The City Manager of Bend has also issued a series of administrative emergency orders related to the public health emergency, which have been ratified by the City Council three times; the latest is currently in effect through Phase 2 of the phased reopening of Oregon, including any resurgence of COVID-19 that might trigger increased restrictions from the State, and was ratified by Council on May 20, 2020.
11. Pursuant to Bend Development Code (BDC) Section 3.6.400, the City does not allow temporary structures or uses without a permit. The same code section also prohibits the use of a motor home, recreational vehicle, travel trailer, tent, or similar device as a dwelling unit.
12. Temporarily reducing restrictions on occupied recreational vehicles and similar devices on private property, with safeguards to mitigate public health impacts and impacts

on surrounding neighborhoods, will allow for additional, temporary housing for persons displaced by the wildfires until more permanent housing is available ("Temporary Emergency Accommodations").

13. The City acknowledges that some areas of the City may have recorded documents, including Conditions, Covenants and Restrictions or other governing documents, which may restrict the ability of a property owner to allow a recreational vehicle or other emergency accommodation to be parked and/or occupied on their property. The City does not monitor, interpret nor enforce such private restrictions. The City encourages Homeowner Association Boards of Directors and other private governing entities, in interpreting or applying such documents and in working with their property owners, to consider suspending enforcement, consistent with this Order, during this time of unprecedented crisis and need. However, this Order does not override or supersede any such private restrictions.

14. In order to prevent negative impacts, and to protect the health, safety and welfare of the persons occupying these Recreational Vehicles and the surrounding neighborhoods and areas, the use must be temporary and comply with the provisions of this Order.

15. This Administrative Order is authorized by BMC 1.60.010, which provides that "On declaration of an emergency, the City shall have all powers not prohibited by Federal and State constitutions and laws, including any powers authorized in emergency situations." These powers "shall" be exercised by the City Manager, who is deemed by the code and declaration to be the "incident commander." The City Manager's power as incident commander is "subject to Council direction and control" and "Council will remain the governing body of the City" during the emergency. BMC 1.60.010(A).

16. The City Manager's authority under the Code is authorized by ORS 401.309, which among other things, allows a local government to designate an "official of the city as the . . . official charged with carrying out emergency duties or functions" under the emergency declaration. As incident commander, the Code allows the City Manager to take a list of enumerated actions during an emergency, including but not limited to the following: "Order and assist the evacuation of people to protect safety or health," "Control, restrict, and/or regulate the sale of goods and services, including the imposition of price controls," and "Any other action for the protection of safety, health, life or property." BMC 1.60.010(B)(3), (7)-(8).

Based on these findings,

THE CITY MANAGER OF THE CITY OF BEND ORDERS THAT:

A. A State of Emergency exists related to the wildfires and their aftermath, which is a natural disaster and an ongoing event resulting in an immediate and substantial threat to life, health or property.

B. The findings in this Order are adopted and incorporated within the Order.

C. The Bend Development Code prohibits the use of a motor home, recreational vehicle, travel trailer, tent, or similar device as a dwelling unit. BDC Section 3.6.400. To

provide for needed housing for those displaced by fire, this Order suspends enforcement of this and all applicable Bend Development Code or Bend Municipal Code provisions that would otherwise prevent Temporary Emergency Accommodations on private property, except for those enforcement issues related to public health and safety to the extent necessary to implement this Order, and any necessary enforcement of the provisions of this Order and further implementing regulations.

D. Within the resources available to the City through city, county, state, federal and community volunteer resources, the City will allow and support applications for Temporary Emergency Accommodations for persons who have lost or had damage to their homes due to wildfires in the state of Oregon.

E. This relief is intended for temporary accommodations for persons who are rebuilding or repairing their home due to fire damage and who so certify to the City. The individual/family should provide documentation or other evidence to the City that they are registered with the Red Cross and with their home county, to help assure they are receiving all the services to which they have access under the multiple declarations referenced in the above findings and otherwise adopted by Oregon counties.

F. The City will develop an expedited approval process which is consistent with OHA public health sanitation best practices, and takes into account state COVID-19 physical distancing and other relevant guidelines, to allow Temporary Emergency Accommodations within the City of Bend. Applicants must sign an agreement whereby they agree to comply with all conditions, guidelines and requirements listed in the agreement and this Order. Failure to comply gives the City the right to immediately revoke the approval.

G. Temporary Emergency Accommodation will be allowed for a recreational vehicle, motor home, travel trailer, truck camper or camping trailer that is self-contained with potable water and sewage tanks and is designed for temporary human habitation and to be used for recreational, seasonal or emergency purposes.

H. One Temporary Emergency Accommodation unit shall be allowed to be occupied for each residential lot, parked on the private property, with the property owner's permission for use by displaced person(s) who are repairing or reconstructing a fire damaged dwelling, subject to City administrative approval.

I. Owners of residential property larger than .5 acres, or commercial or industrial properties of any size, may apply to the City Manager for permission to have multiple RVs on a single parcel. City Manager approval is discretionary and depends on a satisfactory site plan, appropriate sanitation, impact on surrounding properties, and affordability of the spaces provided.

J. No Temporary Emergency Accommodations may be placed on a City street or private roadway. The unit must be entirely located on the lot.

K. Residents of occupied Temporary Emergency Accommodation units must be provided access to sanitation facilities, either within the RV or through access to sanitation facilities in the abutting permanent residence. If within the unit, the resident must provide for sewage disposal through a temporary holding tank with a contract with a pumping

company for regular pumping, or other method of sewage removal. If any effluent is dumped on the ground, the administrative approval will immediately be revoked.

L. To the extent that space used for overnight parking of recreational vehicles for human occupancy can be considered temporary lodging under Chapter 12.05, Room Tax, that chapter does not apply.

M. As a condition of approval, the City reserves the right to conduct a sanitation or any other inspection at any time for compliance with public health and safety and this Order.

N. No system development charges or land use permit will be associated with the administrative approval. This approval is at the sole discretion of City administration without right to administrative or any judicial appeal. No approval will run with the land and shall not give any right to continued use following expiration of this Order or upon withdrawal, expiration or termination of the approval, whichever occurs first. The City retains sole and complete discretion to withdraw, modify, or terminate an approval at any time.

O. The administrative approval will expire immediately if no longer occupied by the person(s) displaced by the wildfire, or when this Order is terminated, whichever occurs first, and the unit can no longer be occupied.

P. Failure to comply with any of the provisions in this Order, or any additional administrative regulations adopted under its authority, will result in immediate revocation of the administrative approval and will require all persons to cease occupying the Temporary Emergency Accommodation immediately. Any violation may also be enforced under the code enforcement authority of the City.

Q. This Order will remain in effect until September 10, 2021, unless earlier terminated. The City Manager may exercise their discretion to amend, terminate, or otherwise change this Order or how it is administered, subject to subsequent ratification by the City Council.

Dated this 6th day of October, 2020

DocuSigned by:

Eric King

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City Manager, City of Bend

Approved as to form:

DocuSigned by:

Mary Alice Winters

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City Attorney

Ratified by the City Council on October 7, 2020.